



General Assembly

January Session, 2009

***Raised Bill No. 6425***

LCO No. 3247

\*03247\_\_\_\_\_CE\_\*

Referred to Committee on Commerce

Introduced by:  
(CE)

***AN ACT CONCERNING SMALL BUSINESS REGULATIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 4-168 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) Except as provided in subsection (g) of this section, an agency,  
4 prior to adopting a proposed regulation, shall: (1) Give at least thirty  
5 days' notice by publication in the Connecticut Law Journal of its  
6 intended action. The notice shall include (A) either a statement of the  
7 terms or of the substance of the proposed regulation or a description  
8 sufficiently detailed so as to apprise persons likely to be affected of the  
9 issues and subjects involved in the proposed regulation, (B) a  
10 statement of the purposes for which the regulation is proposed, (C) a  
11 reference to the statutory authority for the proposed regulation, [and]  
12 (D) when, where and how interested persons may obtain a copy of the  
13 regulatory flexibility analysis required pursuant to section 4-168a, as  
14 amended by this act, and (E) when, where and how interested persons  
15 may present their views on the proposed regulation; (2) give notice by  
16 mail to each joint standing committee of the General Assembly having

17 cognizance of the subject matter of the proposed regulation; (3) give  
18 notice by mail to all persons who have made requests to the agency for  
19 advance notice of its regulation-making proceedings. The agency may  
20 charge a reasonable fee for such notice based on the estimated cost of  
21 providing the service; (4) provide a copy of the proposed regulation to  
22 persons requesting it. The agency may charge a reasonable fee for  
23 copies in accordance with the provisions of section 1-212; (5)  
24 [following publication] no later than the date of the notice in the  
25 Connecticut Law Journal, prepare a fiscal note, including (A) an  
26 estimate of the cost or of the revenue impact on the state, [or] any  
27 municipality of the state[,] and small businesses, including an estimate  
28 of the number of small businesses subject to the proposed regulation,  
29 the projected costs, including reporting, recordkeeping and  
30 administration, and other costs required for compliance with the  
31 proposed regulation, and (B) if applicable, the regulatory flexibility  
32 analysis prepared under section 4-168a, as amended by this act. The  
33 governing body of any municipality, if requested, shall provide the  
34 agency, within twenty working days, with any information that may  
35 be necessary for analysis in preparation of such fiscal note; (6) afford  
36 all interested persons reasonable opportunity to submit data, views or  
37 arguments, orally at a hearing granted under subdivision (7) of this  
38 subsection or in writing, and to inspect and copy the fiscal note  
39 prepared pursuant to subdivision (5) of this subsection; (7) grant an  
40 opportunity to present oral argument if requested by fifteen persons,  
41 by a governmental subdivision or agency or by an association having  
42 not less than fifteen members, if notice of the request is received by the  
43 agency within fourteen days after the date of publication of the notice;  
44 and (8) consider fully all written and oral submissions respecting the  
45 proposed regulation and revise the fiscal note in accordance with the  
46 provisions of subdivision (5) of this subsection to indicate any changes  
47 made in the proposed regulation. No regulation shall be found invalid  
48 due to the failure of an agency to give notice to each committee of  
49 cognizance pursuant to subdivision (2) of this subsection, provided  
50 one such committee has been so notified.

51 (b) If an agency is required by a public act to adopt regulations, the  
52 agency, within five months after the effective date of the public act or  
53 by the time specified in the public act, shall publish in the Connecticut  
54 Law Journal the notice required by subsection (a) of this section of its  
55 intent to adopt regulations. If the agency fails to publish the notice  
56 within such five-month period or by the time specified in the public  
57 act, the agency shall submit a written statement of its reasons for  
58 failure to do so to the Governor, the joint standing committee having  
59 cognizance of the subject matter of the regulations and the standing  
60 legislative regulation review committee. The agency shall submit the  
61 required regulations to the standing legislative regulation review  
62 committee, as provided in subsection (b) of section 4-170, as amended  
63 by this act, not later than one hundred eighty days after publication of  
64 the notice of its intent to adopt regulations, or submit a written  
65 statement of its reasons for failure to do so to the committee.

66 (c) An agency may begin the regulation-making process under this  
67 chapter before the effective date of the public act requiring or  
68 permitting the agency to adopt regulations, but no regulation may take  
69 effect before the effective date of such act.

70 (d) Upon reaching a decision on whether to proceed with the  
71 proposed regulation or to alter its text from that initially proposed, the  
72 agency, at least twenty days before submitting the proposed regulation  
73 to the standing legislative regulation review committee, shall mail to  
74 all persons who have made submissions pursuant to subdivision (6) of  
75 subsection (a) of this section or who have made statements or oral  
76 arguments concerning the proposed regulation and who have  
77 requested notification, notice that it has decided to take action on the  
78 proposed regulation and that it has made available for copying and  
79 inspection pursuant to the Freedom of Information Act, as defined in  
80 section 1-200: (1) The final wording of the proposed regulation; (2) a  
81 statement of the principal reasons in support of its intended action;  
82 and (3) a statement of the principal considerations in opposition to its  
83 intended action as urged in written or oral comments on the proposed

84 regulation and its reasons for rejecting such considerations.

85 (e) Except as provided in subsection (f) of this section, no regulation  
86 may be adopted, amended or repealed by any agency until it is (1)  
87 approved by the Attorney General as to legal sufficiency, as provided  
88 in section 4-169, (2) approved by the standing legislative regulation  
89 review committee, as provided in section 4-170, as amended by this  
90 act, and (3) filed in the office of the Secretary of the State, as provided  
91 in section 4-172.

92 (f) (1) An agency may proceed to adopt an emergency regulation in  
93 accordance with this subsection without prior notice or hearing or  
94 upon any abbreviated notice and hearing that it finds practicable if (A)  
95 the agency finds that adoption of a regulation upon fewer than thirty  
96 days' notice is required (i) due to an imminent peril to the public  
97 health, safety or welfare or (ii) by the Commissioner of Environmental  
98 Protection in order to comply with the provisions of interstate fishery  
99 management plans adopted by the Atlantic States Marine Fisheries  
100 Commission or to meet unforeseen circumstances or emergencies  
101 affecting marine resources, (B) the agency states in writing its reasons  
102 for that finding and (C) the Governor approves such finding in  
103 writing.

104 (2) The original of such emergency regulation and eighteen copies  
105 shall be submitted to the standing legislative regulation review  
106 committee in the form prescribed in subsection (b) of section 4-170,  
107 together with a statement of the terms or substance of the intended  
108 action, the purpose of the action and a reference to the statutory  
109 authority under which the action is proposed, not later than ten days,  
110 excluding Saturdays, Sundays and holidays, prior to the proposed  
111 effective date of such regulation. The committee may approve or  
112 disapprove the regulation, in whole or in part, within such ten-day  
113 period at a regular meeting, if one is scheduled, or may upon the call  
114 of either chairman or any five or more members hold a special meeting  
115 for the purpose of approving or disapproving the regulation, in whole

116 or in part. Failure of the committee to act on such regulation within  
117 such ten-day period shall be deemed an approval. If the committee  
118 disapproves such regulation, in whole or in part, it shall notify the  
119 agency of the reasons for its action. An approved regulation, filed in  
120 the office of the Secretary of the State, may be effective for a period of  
121 not longer than one hundred twenty days renewable once for a period  
122 of not exceeding sixty days, provided notification of such sixty-day  
123 renewal is filed in the office of the Secretary of the State and a copy is  
124 given to the committee, but the adoption of an identical regulation in  
125 accordance with the provisions of subsections (a), (b) and (d) of this  
126 section is not precluded. The sixty-day renewal period may be  
127 extended an additional sixty days for emergency regulations described  
128 in subparagraph (A)(ii) of subdivision (1) of this subsection, provided  
129 the Commissioner of Environmental Protection requests of the  
130 standing legislative regulation review committee an extension of the  
131 renewal period at the time such regulation is submitted or not less  
132 than ten days before the first sixty-day renewal period expires and said  
133 committee approves such extension. Failure of the committee to act on  
134 such request within ten days shall be deemed an approval of the  
135 extension.

136 (3) If the necessary steps to adopt a permanent regulation, including  
137 publication of notice of intent to adopt, preparation and submission of  
138 a fiscal note in accordance with the provisions of subsection (b) of  
139 section 4-170, as amended by this act, and approval by the Attorney  
140 General and the standing legislative regulation review committee, are  
141 not completed prior to the expiration date of an emergency regulation,  
142 the emergency regulation shall cease to be effective on that date.

143 (g) If an agency finds (1) that technical amendments to an existing  
144 regulation are necessary because of (A) the statutory transfer of  
145 functions, powers or duties from the agency named in the existing  
146 regulation to another agency, (B) a change in the name of the agency,  
147 (C) the renumbering of the section of the general statutes containing  
148 the statutory authority for the regulation, or (D) a correction in the

149 numbering of the regulation, and no substantive changes are  
150 proposed, or (2) that the repeal of a regulation is necessary because the  
151 section of the general statutes under which the regulation has been  
152 adopted has been repealed and has not been transferred or reenacted,  
153 it may elect to comply with the requirements of subsection (a) of this  
154 section or may proceed without prior notice or hearing. Any such  
155 amendments to or repeal of a regulation shall be submitted in the form  
156 and manner prescribed in subsection (b) of section 4-170, as amended  
157 by this act, to the Attorney General, as provided in section 4-169, and  
158 to the standing legislative regulation review committee, as provided in  
159 section 4-170, as amended by this act, for approval and upon approval  
160 shall be filed in the office of the Secretary of the State with, in the case  
161 of renumbering of sections only, a correlated table of the former and  
162 new section numbers.

163 (h) No regulation adopted after October 1, 1985, is valid unless  
164 adopted in substantial compliance with this section. A proceeding to  
165 contest any regulation on the ground of noncompliance with the  
166 procedural requirements of this section shall be commenced within  
167 two years from the effective date of the regulation.

168 Sec. 2. Section 4-168a of the general statutes is repealed and the  
169 following is substituted in lieu thereof (*Effective from passage*):

170 (a) As used in this section:

171 (1) "Agency", "proposed regulation" and "regulation" shall have the  
172 same meanings as provided in section 4-166; and

173 (2) "Small business" means a business entity, including its affiliates,  
174 that (A) is independently owned and operated and (B) employs fewer  
175 than [fifty] seventy-five full-time employees or has gross annual sales  
176 of less than five million dollars, provided that an agency, in adopting  
177 regulations in accordance with the provisions of this chapter, may  
178 define "small business" to include a greater number of full-time  
179 employees, not to exceed applicable federal standards or five hundred,

180 whichever is less, if necessary to meet the needs and address specific  
181 problems of small businesses.

182 (b) Prior to the adoption of any proposed regulation on and after  
183 October 1, 1994, each agency shall prepare a regulatory flexibility  
184 analysis in which the agency shall [, where consistent with public  
185 health, safety and welfare,] consider utilizing regulatory methods that  
186 will accomplish the objectives of applicable statutes while minimizing  
187 adverse impact on small businesses. The agency shall not use any such  
188 methods that are inconsistent with public health, safety and welfare.  
189 The agency shall consider, without limitation, each of the following  
190 methods of reducing the impact of the proposed regulation on small  
191 businesses:

192 (1) The establishment of less stringent compliance or reporting  
193 requirements for small businesses;

194 (2) The establishment of less stringent schedules or deadlines for  
195 compliance or reporting requirements for small businesses;

196 (3) The consolidation or simplification of compliance or reporting  
197 requirements for small businesses;

198 (4) The establishment of performance standards for small businesses  
199 to replace design or operational standards required in the proposed  
200 regulation; and

201 (5) The exemption of small businesses from all or any part of the  
202 requirements contained in the proposed regulation.

203 (c) Prior to the publication of the public notice required pursuant to  
204 subsection (a) of section 4-168, as amended by this act, for the adoption  
205 of any proposed regulation that may have an adverse impact on small  
206 businesses, each agency shall notify the Department of Economic and  
207 Community Development and the joint standing committee of the  
208 General Assembly having cognizance of matters relating to economic  
209 development of its intent to adopt the proposed regulation. The

210 Department of Economic and Community Development shall advise  
211 and assist agencies in complying with the provisions of this section.

212 (d) The requirements contained in this section shall not apply to  
213 emergency regulations issued pursuant to subsection (c) of section 4-  
214 168, as amended by this act; regulations that do not affect small  
215 businesses directly, including, but not limited to, regulations  
216 concerning the administration of federal programs; regulations  
217 concerning costs and standards for service businesses such as nursing  
218 homes, long-term care facilities, medical care providers, day care  
219 facilities, water companies, nonprofit 501(c)(3) agencies, group homes  
220 and residential care facilities; and regulations adopted to implement  
221 the provisions of sections 4a-60g to 4a-60i, inclusive.

222 Sec. 3. Section 4-168b of the general statutes is repealed and the  
223 following is substituted in lieu thereof (*Effective from passage*):

224 (a) Each agency shall maintain an official regulation-making record  
225 for the period required by law for each regulation it proposes in  
226 accordance with the provisions of section 4-168, as amended by this  
227 act. The regulation-making record and materials incorporated by  
228 reference in the record shall be available for public inspection and  
229 copying.

230 (b) The agency regulation-making record shall contain: (1) Copies of  
231 all publications in the Connecticut Law Journal with respect to the  
232 regulation or the proceeding upon which the regulation is based,  
233 including the regulatory flexibility analysis required pursuant to  
234 section 4-168a, as amended by this act; (2) a copy of any written  
235 analysis prepared for the proceeding upon which the regulation is  
236 based; (3) all written petitions, requests, submissions, and comments  
237 received by the agency and considered by the agency in connection  
238 with the formulation, proposal or adoption of the regulation or the  
239 proceeding upon which the regulation is based; (4) the official  
240 transcript, if any, of proceedings upon which the regulation is based  
241 or, if not transcribed, any tape recording or stenographic record of

242 such proceedings, and any memoranda prepared by any member or  
243 employee of the agency summarizing the contents of the proceedings;  
244 (5) a copy of all official documents relating to the regulation, including  
245 the regulation filed in the office of the Secretary of the State, a  
246 statement of the principal considerations in opposition to the agency's  
247 action, and the agency's reasons for rejecting such considerations, as  
248 required pursuant to section 4-168, as amended by this act, and the  
249 fiscal note prepared pursuant to subsection (a) of said section 4-168, as  
250 amended by this act, and section 4-170, as amended by this act; (6) a  
251 copy of any petition for the regulation filed pursuant to section 4-174;  
252 and (7) copies of all comments or communications between the agency  
253 and the legislative regulation review committee.

254 (c) The agency regulation-making record need not constitute the  
255 exclusive basis for agency action on that regulation or for judicial  
256 review thereof.

257 Sec. 4. Subsection (b) of section 4-170 of the general statutes is  
258 repealed and the following is substituted in lieu thereof (*Effective from*  
259 *passage*):

260 (b) (1) No adoption, amendment or repeal of any regulation, except  
261 a regulation issued pursuant to subsection (f) of section 4-168, as  
262 amended by this act, shall be effective until (A) the original of the  
263 proposed regulation approved by the Attorney General, as provided in  
264 section 4-169, the regulatory flexibility analysis provided pursuant to  
265 section 4-168a, as amended by this act, and eighteen copies thereof are  
266 submitted to the standing legislative regulation review committee at  
267 the designated office of the committee, in a manner designated by the  
268 committee, by the agency proposing the regulation, (B) the regulation  
269 is approved by the committee, at a regular meeting or a special  
270 meeting called for the purpose, and (C) the regulation is filed in the  
271 office of the Secretary of the State by the agency, as provided in section  
272 4-172. (2) The date of submission for purposes of subsection (c) of this  
273 section shall be the first Tuesday of each month. Any regulation

274 received by the committee on or before the first Tuesday of a month  
275 shall be deemed to have been submitted on the first Tuesday of that  
276 month. Any regulation submitted after the first Tuesday of a month  
277 shall be deemed to be submitted on the first Tuesday of the next  
278 succeeding month. (3) The form of proposed regulations which are  
279 submitted to the committee shall be as follows: New language added  
280 to an existing regulation shall be in capital letters or underlining, as  
281 determined by the committee; language to be deleted shall be enclosed  
282 in brackets and a new regulation or new section of a regulation shall be  
283 preceded by the word "(NEW)" in capital letters. Each proposed  
284 regulation shall have a statement of its purpose following the final  
285 section of the regulation. (4) The committee may permit any proposed  
286 regulation, including, but not limited to, a proposed regulation which  
287 by reference incorporates in whole or in part, any other code, rule,  
288 regulation, standard or specification, to be submitted in summary form  
289 together with a statement of purpose for the proposed regulation. On  
290 and after October 1, 1994, if the committee finds that a federal statute  
291 requires, as a condition of the state exercising regulatory authority,  
292 that a Connecticut regulation at all times must be identical to a federal  
293 statute or regulation, then the committee may approve a Connecticut  
294 regulation that by reference specifically incorporates future  
295 amendments to such federal statute or regulation provided the agency  
296 that proposed the Connecticut regulation shall submit for approval  
297 amendments to such Connecticut regulations to the committee not  
298 later than thirty days after the effective date of such amendment, and  
299 provided further the committee may hold a public hearing on such  
300 Connecticut amendments. (5) The agency shall [prepare a fiscal note,  
301 including an estimate of the cost or of the revenue impact on the state  
302 and any municipality, and shall] append a copy of the fiscal note  
303 prepared pursuant to subsection (a) of section 4-168, as amended by  
304 this act, to each copy of the proposed regulation. At the time of  
305 submission to the committee, the agency shall mail or submit a copy of  
306 the proposed regulation and the fiscal note [, prepared in accordance  
307 with subsection (a) of section 4-168,] to (A) the Office of Fiscal Analysis

308 which, within seven days of receipt, shall submit an analysis of the  
309 fiscal note to the committee; and (B) each joint standing committee of  
310 the General Assembly having cognizance of the subject matter of the  
311 proposed regulation. No regulation shall be found invalid due to the  
312 failure of an agency to submit a copy of the proposed regulation and  
313 the fiscal note to each committee of cognizance, provided such  
314 regulation and fiscal note has been submitted to one such committee.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4-168
Sec. 2	<i>from passage</i>	4-168a
Sec. 3	<i>from passage</i>	4-168b
Sec. 4	<i>from passage</i>	4-170(b)

***Statement of Purpose:***

To ascertain the impact proposed regulations will have on small businesses.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*